COMMISSION ON SECURITY AND
COOPERATION IN EUROPE

102d Congress
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PEACEFUL SETTLEMENTS OF DISPUTES IN THE CSCE PROCESS

A Report Prepared by the Staff
of the Commission on Security and
Cooperation in Europe

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TABLE OF CONTENTS

REPORT ON PEACEFUL SETTLEMENTS OF DISPUTES IN THE CSCE PROCESS 1
Summary 1
Background on Peaceful Settlements of Disputes in the CSCE Context 2
Generally 2
The Montreux Meeting 2
The Athens Meeting 3
Prelude to Valletta: From The Vienna Follow-up Meeting to the Paris Charter 5
The Valletta Meeting on Peaceful Settlements of Disputes 6
Mandate and Organization of the Valletta Meeting 6
U.S. Delegation to the Meeting and Public Diplomacy 7
U.S. Objectives for the Meeting 7
Opening of the Meeting and the Crack-down in the Baltics 8
Proposals 10
Negotiations and the Report 10
Conclusions 12
The Status PSD after the Berlin Council of Ministers Meeting 13

THE CSCE DISPUTE SETTLEMENT MECHANISM: A GUIDE 15
What is the Valletta Mechanism? 15
What is the "register of qualified candidates" and the "nominating institution"? 16
What triggers the Valletta Mechanism? 16
What is the scope of the Valletta Mechanism? 17
Limitations on the functioning of the Valletta Mechanism 18
Counter-Limitations 20
Unanswered Questions 21
Who acts on behalf of the "nominating institution"? 21
Who pays for the Valletta Mechanism? 21
What if there are more than two disputing parties? 22

STATEMENTS BY THE U.S. DELEGATION 23
Opening Statement by Michael K. Young, *January 16, 1991* 23
Statement of Michael K. Young, *January 21, 1991* 31
Statement of Michael K. Young, *January 22, 1991* 32
Statement of Michael K. Young, *January 24, 1991* 37
Statement of Michael K. Young, *January 30, 1991* 38

CSCE DOCUMENTS RELATING TO PEACEFUL SETTLEMENTS OF DISPUTES 41
The Montreux Report, December 1978 42
The Athens Report, April 1984 44
The Valletta Report, February 1991 45
Summary of Conclusions of the Council of Foreign Ministers (Excerpt) June 1991 58

REPORT ON
PEACEFUL SETTLEMENTS OF DISPUTES
IN THE CSCE PROCESS

16 August 1991

"Procedures for peaceful settlements of disputes pose basic questions about the future development of the CSCE and for the role of the Council of Ministers. If satisfactory answers cannot be found to these questions the future of the CSCE is bleak."

-- *Institution-Building in the Conference on Security and Cooperation in Europe, paper by James E. Goodby, December 1990*

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Summary

From January 15 to February 8, 1991, the participating States of the CSCE met in Valletta, Malta, for an inter-sessional meeting on the peaceful settlement of disputes (PSD), one of the 10 Principles Guiding Relations between Participating States enunciated in the 1975 Helsinki Final Act. Although it was the third CSCE inter-sessional meeting on this subject, the previous meetings (Montreux, 1978; Athens, 1984) were overshadowed by the polarization of East-West relations and reached little substantive agreement.

The meeting opened on January 15 as the United Nations deadline for Iraqi withdrawal from occupied Kuwait expired. Just hours before the meeting began, Soviet forces attacked and killed civilians in occupied Lithuania. Both events colored subsequent discussions in Valletta.

At the close of the meeting, a document was adopted setting forth tentative provisions for a CSCE mechanism for the peaceful settlement of disputes. However, delegations could not reach agreement designating an institution to oversee the implementation of the mechanism and, consequently, it remained inoperative.

On June 20, 1991, at the Berlin meeting of the CSCE Council of Foreign Ministers, a decision was reached to place the technical aspects of the Valletta mechanism under the auspices of the Director of the Vienna Conflict Prevention Center (CPC). It is expected that a process of nominating persons on whose expertise the participating States may draw in the event of an unreconciled dispute will be completed later in the year (1991), making the mechanism operational. Nevertheless, use of the Valletta mechanism is significantly limited by an "exceptions" clause, inserted at the end of the Valletta negotiations.

Background on Peaceful Settlements of Disputes in the CSCE Context

Generally

During the original Helsinki Consultations (1972 - 1975), Switzerland championed an elaborate proposal on the "peaceful settlements of disputes" (*hereinafter,* PSD), based on a concept developed by Rudolf L. Bindschedler. The idea did not garner much interest or support, enabling the Soviet Union to quash it with little resistance. In the end, Switzerland was forced to settle for a limited reference to PSD in Basket I of the Helsinki Final Act.

The Helsinki Final Act stipulates that all Principles in the decalogue are of primary significance; each must be applied equally and unreservedly; and each must be interpreted taking into account the others. Thus, the duty to settle disputes peacefully, Principle V, is inextricably intertwined with the other Principles, such as the duty to refrain from the threat or use of force (Principle II), the duty to respect human rights and fundamental freedoms (Principle VII), and the duty to respect the equal rights of peoples and their right to self-determination (Principle VIII). In addition, the CSCE commitment to settle disputes peacefully must be read in conjunction with the provisions of the United Nations Charter, which is incorporated by reference in the Helsinki Final Act.

The Montreux Meeting

Although the Final Act language fell far short of the ambitious proposal originally tabled by the Swiss, it ensured a place for PSD

in future CSCE meetings, and each subsequent Follow-up Meeting has taken up the issue. While the first main Follow-up Meeting, held in Belgrade from 1977 to 1978, did not produce any new substantive commitments, the participating States were able to schedule several inter-sessional meetings, including one on PSD in Montreux. According to the Belgrade Concluding Document, the purpose of the Montreux meeting was "to pursue the examination and elaboration of a generally acceptable method for peaceful settlement of disputes aimed at complementing already existing methods."

Discussions at Montreux (October 31 to December 11, 1978) focused on three proposals: Swiss, Eastern, and Western. The Swiss working paper included both binding and nonbinding elements for peacefully settling disputes including negotiation, inquiry, mediation, conciliation, and arbitration. The Soviet delegation presented mandatory consultations and negotiations as the only basis for a possible method for PSD, while rejecting any schema involving compulsory arbitration, which would, in their view, undermine national sovereignty and freedom of choice. The western paper put forward a graduated method for PSD within specific subject areas, concentrating on mandatory, binding procedures including arbitration for disputes of a justiciable, i.e., nonpolitical nature. The U.S. delegation supported proposals which would involve compulsory arbitration.

Although the Montreux meeting also ended without consensus on substantive commitments, it kept the idea of PSD alive in the CSCE process by two means. First, it set forth a common approach to the elaboration of a method for PSD between or among the participating States, i.e., the parameters for any future PSD system; second, its report recommended that the Madrid Follow-up Meeting consider convening another PSD meeting.

The Athens Meeting

A second main follow-up meeting was held in Madrid from 1980 to 1983. It, too, failed to elaborate further provisions on the peaceful settlements of disputes. However, in accordance with the recommendation of the Montreux meeting, the Madrid Concluding Document mandated that another inter-sessional meeting on PSD

be held in Athens in 1984. Opening on March 21, the Athens meeting lasted for approximately 6 weeks, ending on 30 April 1984.

Prior to the start of the meeting, the various approaches to PSD could be characterized as follows: The Soviet Union and other East European countries were generally opposed to any mechanism which would include mandatory third-party procedures for settlement of international disputes, and instead favored compulsory consultations. Western and neutral countries saw some form of compulsory third-party procedures as the way to enhance already-existing methods for PSD, but differed on the extent to which those mechanisms should include legally-binding processes, e.g. arbitration.

The United States circulated two proposals in Athens. One focused on a graduated series of mechanisms (e.g., good offices, inquiry, mediation, etc.) that start out as compulsory but are only binding at the final arbitration stage if the parties agreed to proceed to arbitration. The second proposal would have established bilateral, joint commissions (modeled on U.S.-Canadian and U.S.-Mexican commissions), empowered to make recommendations on "non-security" issues within the CSCE context. Only the first proposal was formally tabled during the course of the meeting.

The first proposal shared many common elements with a European Community proposal, although the United States attempted to give greater latitude for means to avoid entering into the binding-arbitration stage. The second U.S. proposal was criticized by some Western and NNA countries as 1) disadvantaging smaller countries, 2) deviating from the multilateral nature of the Helsinki process, and 3) undermining the concept that Helsinki commitments are owed to *all* of the participating States.

The Athens meeting took place during the Stockholm Conference on Disarmament in Europe, where the United States refused to agree to a non-use of force treaty arguing, *inter alia*, that CSCE is a political process not a legal one and, in any case, it would be unacceptable to elevate military issues to treaty status without tangible progress in the human rights sphere. During the

course of the Athens meeting, the first U.S. proposal was recast in less treaty-like language consistent with the U.S. position in Stockholm.

The Athens meeting was enlivened by the U.S. renunciation on April 6, 1984, of the compulsory jurisdiction of the International Court of Justice (ICJ). Since 1946, the U.S. had accepted the compulsory jurisdiction of the Court in accordance with article 36.2 of its statute. This action, taken without consultations with the U.S. Congress, was an unsuccessful attempt to prevent Nicaragua from suing the United States before the ICJ for the mining of Nicaragua's harbors. Although this action resulted in some open criticism from the East and fairly pointed, private questions from Western and NNA countries, it did not seem to cause a complete rupture in the meeting.

The Athens meeting undertook negotiations on a substantive document, but failed to reach consensus on any of the proposed PSD mechanisms. Indeed, at the end of the meeting significant differences in positions remained unbridged and there seemed to be a general feeling that whatever common ground existed was insufficient to form the basis for commitment. The Athens Report notes that "no consensus was reached on a method" for the peaceful settlement of disputes.

Prelude to Valletta: From The Vienna Follow-up Meeting to the Paris Charter

During the course of the Vienna meeting (1986-89), the CSCE participating States once again attempted to address the issue of peaceful settlement of disputes. The language finally agreed to largely reiterated the basic Final Act commitment and scheduled yet another inter-sessional PSD meeting.

But a funny thing happened on the way to Valletta. In the Soviet Union, the policies of Mikhail Gorbachev had led to a progressive improvement in respect for human rights in the Soviet Union and an overall loosening of Moscow's hold over Eastern Europe. In 1989, decades of popular dissatisfaction with the Communist regimes swelled up, taking advantage of the vacuum created as Moscow's control receded, and culminated in largely

peaceful and democratic revolutions in several East European countries. During the course of 1990, the division of Germany--long the symbol of the divided continent--ended with its unification on October 3, and the Cold War was declared over. Throughout this reform process, it was widely proclaimed, particularly by those leading revolutions and reform movements in the East, that the CSCE process had played an instrumental role in bringing about these improvements.

As a consequence, in November 1990 the heads of State or government from the participating States held their first CSCE summit meeting since 1975. While the overall tenor of the summit was almost euphoric, many commentators had already begun to voice the hope and the expectation that the CSCE would now be able to tackle the most troubling issues confronting Europe today: economic instability, ethnic rivalry, restive independence movements, overwhelming waves of refugees, and new security concerns. In that context, the Valletta Meeting took on a new prominence and new expectations.

Those expectations were reflected in the Paris Charter, which stressed that "full use should be made. . . of the opportunity of the Meeting on the Peaceful Settlement of Disputes which will be convened in Valletta," and further mandated that the Council of Foreign Ministers, which first met in June 1991, would "take into account the Report of the Valletta Meeting."

The Valletta Meeting on Peaceful Settlements of Disputes

Mandate and Organization of the Valletta Meeting

The Valletta meeting was tasked with establishing a list of categories of disputes appropriate for the involvement of a third party. That is, it was not mandated with discussing disputes *per se,* but discussing means and processes which might be used to resolve unnamed, theoretical disputes.

The Valletta meeting took place over the course of 19 working days. All sessions were scheduled as plenaries. Although the Vienna mandate provided for these plenaries to be closed, the

United States sought and achieved consensus to open morning plenaries to the public.

The agenda was divided among five items: 1) formal opening of the meeting with an address by the host country; 2) a general exchange of views; 3) examination of proposals; 4) preparation and adoption of a report; and 5) formal closure of the meeting by the host country.

U.S. Delegation to the Meeting and Public Diplomacy

The U.S. delegation to the meeting was headed by Professor Michael Young, Deputy Legal Advisor with the Department of State, on leave from Columbia University's School of Law. John Evans of the State Department served as Deputy Head of the Delegation. Other members of the Delegation included Assistant Legal Advisor Susan Biniaz. Commission staff also participated as members of the delegation.

One public member, Professor Richard B. Bilder from the University of Wisconsin School of Law, joined the delegation during the first week of the meeting. Professor Bilder has written extensively on the subject of peaceful settlements of disputes and is widely recognized for his expertise in this area. During the course of the meeting, Estonian parliamentarian Marju Lauristin was hosted by the U.S. delegation.

Historically, the PSD area has generated less public interest than many other subjects embraced within the Helsinki process, such as security, human rights, and humanitarian issues. It was not surprising, then, that nongovernmental attendance at and press interest in the meeting was, relative to other CSCE meetings, low. In addition, the events in the nearby Gulf region may have further contributed to the small public turn-out. Nevertheless, the Maltese executive secretariat undertook all appropriate steps to ensure that the CSCE standards for openness and access were maintained for non-governmental organizations, the press, and representatives from non-CSCE states.

U.S. Objectives for the Meeting

Given that the Vienna mandate required the Valletta meeting to produce a report, the United States was committed to achieving a document which would expand, rather than narrow, the range of options for settling disputes available to policy-makers. This was considered especially important for the newly emerging democracies in Eastern Europe, which lacked the practical experience which had developed in the West in managing and resolving state-to-state disputes.

Opening of the Meeting and the Crack-down in the Baltics

The first day of the meeting took place in the long shadow thrown from the Gulf, to which some delegates made reference in their opening remarks, as the January 15 deadline for the Iraqi withdrawal from Kuwait expired. But the immediate attention of the delegates was drawn to the shocking events in the Baltic States where, just hours before the Valletta meeting opened, over a dozen unarmed civilians were killed in Lithuania by Soviet occupying forces. The flagrant use of force stood in stark contrast to the spirit and the letter of Principle V of the Helsinki Final Act, committing all participating States to the peaceful settlement of disputes.

No less than 18 countries individually protested the Soviet actions in their opening statements, as well as Luxembourg which spoke for the European Community. Most significantly, all former Warsaw Pact countries condemned the use of force. Romania, for example, stated, "Our position on the Baltics is well known. The use of force has led to dead and wounded. The central and local authorities should act in the spirit of the Helsinki Final Act and other CSCE instruments." Czechoslovakia described events in Vilnius as "tragic and sinister." The Hungarian representative expressed the views of many: "As we see it, domestic and international dispute settlement are interrelated. Dialogue, tolerance, respect for mutual interests characterize both. Two months after the Paris euphoria, my country was shocked by the events in Lithuania. The Soviet leadership has just subscribed to the Charter of Paris, which has as guiding ideas that democratic government is based on the will of the people and that the principles of the rule

of law based on the respect for human rights form the foundation of the new European architecture. We sincerely hope that the Baltic actions were only a one-time deviation from the generally positive political course of perestroika and not a sign of a major change in the politics of the Soviet Union." Remarks by the U.S. delegation are attached in full.

In addition, numerous statements protesting the Soviet actions were circulated to all delegations. Those statements included a press release by the Commission Chairmen Steny H. Hoyer and Dennis DeConcini; the statement by U.S. President George Bush; the formal condemnation by the European Community; the formal condemnation by NATO; the statement of the Canadian Foreign Ministry; the statement by Czechoslovak Foreign Minister Jiri Dienstbier; and the statement of Ambassador John Maresca, head of the U.S. Delegation to the Vienna Confidence- and Security-Building Measures negotiations. Subsequent protests followed additional deaths which resulted from Soviet violence in Latvia later in the meeting.

During the course of the meeting, the events in the Baltics were also simultaneously pursued in other CSCE fora. During the first week, at a meeting of technical experts convened in Vienna, Austria proposed holding a special CSCE emergency meeting to address the Soviet actions. Although the Soviet Union denied the necessary consensus for holding the meeting, every other delegation supported it. (Subsequently, at the June 1991 Council of Ministers meeting, agreement was reached to permit the convening of a CSCE emergency meeting without full consensus, provided that twelve countries endorse the original call.)

During the second week of the Valletta meeting, the crackdown was protested at the 2-day CSCE meeting of the Committee of Senior Officials, which was also held in Vienna. Finally, throughout the meeting, the CSCE human dimension mechanism was invoked by numerous countries, including the United States, with the Soviet Union.

In a pro forma act, Albania's request to attend as an observer was given consensus. In other areas, delegations delved into

matters of substance, laying markers of high expectations for the meeting, not withstanding events in the Baltics.

Proposals

During the course of the meeting, only eight proposals were tabled. None of these proposals was sponsored by a group of countries constituting a traditional alliance or CSCE negotiating bloc. Of the proposals, two in particular became the core for discussion, taking into account the other proposals; a proposal introduced by Switzerland and co-sponsored by Austria, Cyprus, Czechoslovakia, Liechtenstein, Poland, San Marino, and Yugoslavia, and a proposal introduced by the United States.

The Swiss proposal was considered by some to be relatively more "ambitious" because it would follow a single hierarchy of steps applicable to all disputes, which could lead to binding results. However, such an approach would only apply to a relatively narrow range of disputes. In contrast, the U.S. approach started from the assumption that there are a wide variety of kinds of disputes, and no single method of dispute resolution or settlement is suitable for all of them. Therefore, dispute settlement is facilitated by processes which relate the type of dispute in question with the most appropriate and relevant dispute resolution method.

Negotiations and the Report

Despite the tragic events in the Baltic States, delegations in Valletta did not revert to traditional negotiating blocs, hardened along the lines of military alliances and bogged down by polarized, Cold-War style divisions. Instead, the Valletta alliances seemed to be forged on the basis of shared views on specific issues, rather than along the lines of any formal alliances.

The negotiations in Valletta evidenced a wide range of views on the appropriate steps to facilitate a peaceful settlement of disputes. In fact, the substantive debate among delegates reflected serious consideration of the fundamental questions which drive and ultimately determine the shape of various processes. Among the threshold questions delegations considered were:

- Should a PSD mechanism permit bilateral action or, consistent with the CSCE framework, must it provide a role for all participating States (the multilateral approach)?
- Should a PSD mechanism be of a "technical" (i.e., "legal") nature, or of a "political" nature? That is, is it possible to make a determination that some disputes are of a "justiciable" nature, and therefore appropriate for a "technical" resolution; alternatively, should the process emphasize political disputes of the kind that have traditionally been raised at CSCE follow-up meetings?
- Is it possible to delineate certain categories of disputes as subject to a PSD mechanism while effectively excluding others? That is, can security, political, or other disputes be excluded?
- Is it possible to develop an opt-in-opt-out clause, that would enable each country to delineate which disputes to submit to the PSD process? If so, does that undermine the long-standing CSCE principle that all participating States are equally bound by all CSCE provisions?
- Should any phase of the process be compulsory? One school of thought said that a PSD process, if agreed, should enable any one country to bring another into the process *by right*. A second school of thought seemed to reject a compulsory initiation of the process, but argues that the result of the process should be binding. (These two elements are not necessarily mutually exclusive.)
- Is it acceptable to link PSD with other issues, for example, with a non-use of force treaty?
- Does the development of a PSD process require institutionalization?

The Report ultimately adopted begins with general principles, which elaborate axioms applicable to any dispute. Those principles were immediately binding on all participating States. These include, for example, the provision that a request to have a settlement procedure does not constitute an unfriendly act and an agreement by the participating States to seek arrangements and procedures for prior notification and consultation regarding actions by one State likely to affect significantly the interests of another State.

A second section of the Report outlines a "CSCE Dispute Resolution Mechanism." This mechanism requires the participating States, should they be unable to resolve peacefully a dispute between them, to seek the assistance of a third party or parties, who are collectively if somewhat awkwardly called "the Mechanism." The ultimate task of the Mechanism is not to resolve the dispute, but to make comments and provide advice to the disputing parties regarding an appropriate and acceptable method for resolving their dispute.

This Mechanism was, however, constrained in several ways. First and foremost, the Mechanism could not exist or come into effect until "the necessary arrangements" were established--that is, until the Mechanism was placed under the auspices of some person or institution capable of overseeing the process of selecting the third party or parties. As a rule, CSCE documents do not create "provisional" commitments which require subsequent action to be brought into effect.

Second, the Mechanism was limited by an exceptions clause that prohibits the Mechanism from being used if either party considers the dispute to raise issues concerning "territorial integrity, or national defense, title to sovereignty over land territory, or competing claims with regard to the jurisdiction over other areas." This self-judging clause, contained in section XII, guts the Mechanism of the power to deal with many of the most pressing issues between and within the participating States.

Conclusions

The dissolution of the East-West polarity created greater expectations regarding the potential for creating a CSCE PSD mechanism. In fact, the removal of that layer of differences has unmasked fundamental questions which must be answered in order to create any PSD system within the CSCE. At the Valletta Meeting, it became clear that the participating States simply do not share a consensus vision regarding how this issue should be approached in the context of CSCE.

The Valletta Report reflects the compromise struck between the desire to maintain the momentum achieved in other recent

inter-sessional meetings such as Bonn and Copenhagen--each of which concluded with substantive new documents--and the reality that, at least in the area of PSD, considerable differences remain among the participating States.

The Status PSD after the Berlin Council of Ministers Meeting

As a practical matter, the Council of Ministers meeting, held June 19-20, 1991, was asked to make the decision that delegations were unable to make in Valletta: Where should the PSD mechanism be housed? While several possibilities were considered, including the Permanent Court of Arbitration at the Hague, the Center for the Prevention of Conflicts in Vienna, and the Secretariat in Prague, it was ultimately decided to house the Valletta Mechanism at the CPC in Vienna, under the auspices of its Director. Participating States were invited by the Council to communicate by August 30, 1991 the names of up to four persons to be included on the register of mechanism candidates.

The Valletta Report also notes that the next CSCE Follow-up Meeting is scheduled to open in March 1992 and recommends that "the commitments contained in the present Report *as well as their implementation* . . . be kept under review" (emphasis added). It remains to be seen whether or not, in fact, the Valletta Mechanism will be implemented prior to the Helsinki meeting. The existence and creation of other CSCE mechanisms (the Human Dimension Mechanism, the Unusual Military Activities provisions under para. 17 of the Vienna 1990 Document on Confidence- and Security-Building Measures, and the newly created Berlin Emergency Mechanism) provide alternatives for raising issues besides the narrowly construed Valletta provisions.

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THE CSCE DISPUTE SETTLEMENT MECHANISM: A GUIDE

From January 15 to February 8, 1991, the 34 CSCE participating States met in Valletta, Malta, for the third inter-sessional meeting on the peaceful settlement of disputes (PSD), one of the 10 Principles Guiding Relations between Participating States enunciated in the 1975 Helsinki Final Act. At the end of that meeting, they adopted THE REPORT OF THE CSCE MEETING OF EXPERTS ON THE PEACEFUL SETTLEMENT OF DISPUTES, VALLETTA 1991. The Berlin meeting of the CSCE Council of Foreign Ministers (June 19-20, 1991) was mandated by the Charter of Paris for a New Europe (November 1990) to "take into account the Report of the Valletta Meeting."

The Valletta Report consists of four parts: an Introduction; Principles for Dispute Resolution; Provisions for A CSCE Procedure for Peaceful Settlement of Disputes [Provisions]; and an untitled conclusion. The third part describes a "CSCE Dispute Settlement Mechanism" [the Valletta Mechanism[1]]. While the obligation of the participating States to abide by the dispute settlement principles[2] commenced with the adoption of the Valletta Report, the Provisions for a PSD procedure required further decisions in order to be made operational. Those decisions were made by the Council of Foreign Ministers at its first meeting, held in June 1991 in Berlin.

What is the Valletta Mechanism?

The "Valletta Mechanism" is not a mechanism *per se* but a group of one or more people--third parties--selected by common

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[1]Not to be confused with the so-called "Human Dimension Mechanism," a product of the 1989 Vienna Concluding Document, elaborated on in the 1990 Copenhagen Document; the "Unusual Military Activities (UMA) Mechanism," a product of the Vienna Document 1990 of the Negotiations on Confidence- and Security-Building Measures; or the "Berlin Emergency Mechanism," a product of the June 1991 meeting of the CSCE Council of Foreign Ministers.

[2]So described to distinguish them from the "Ten Guiding Principles" of the Helsinki Final Act.

agreement[3] by disputing parties from a "register of qualified candidates" maintained by "the nominating institution." The number of persons making up any given Valletta Mechanism is limited only by the disputing parties' ability to reach agreement and by the number of names of on the register itself.[4]

What is the "register of qualified candidates" and the "nominating institution"?

The register comprises the names of up to four persons nominated by each participating State desiring to do so--i.e., currently up to 140 names.[5] There is nothing in the Valletta Report which speaks to the question of the skills or other criteria for making these nominations; the nominees are merely described as "qualified candidates." However, no member of a Mechanism may be a national of, or permanently resident in the territory of any State involved in the dispute. If the disputing parties both agree, they may create a Mechanism comprised of persons other than those named in the register.

Pursuant to the decisions of the Berlin Council of Ministers meeting, the nominating institution is the Conflict Prevention Center (CPC) in Vienna; its senior official is its Director.

What triggers the Valletta Mechanism?

In the event that parties are unable to settle a dispute, any party to a dispute may request the establishment of the Valletta Mechanism. Although "party to a dispute" is not defined in the Valletta Report, section I of the Provisions begins, "If a dispute arises between participating States . . . " This language reflects the negotiators intention that the Provisions be restricted to CSCE participating States. Thus, even though a dispute may involve non-

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[3]I.e., in traditional CSCE lingo, consensus of the parties.

[4]That is, the number of names on the register of persons who are not nationals or permanent residents of either of the disputing parties' countries.

[5]That is, four times the number of participating States. There are currently 35 participating States.

participating States, nongovernmental entities, or governmental entities which are not States, they are not "parties to a dispute" for these purposes. This underscores the intention of the drafters to restrict the Valletta Mechanism to state-to-state disputes.

The first step requires one party to notify the other that it wants to establish the Valletta Mechanism. If the parties are unable to reach "common agreement" on the composition of the Mechanism within 3 months after one party has notified another of its intention to establish the Valletta Mechanism, the Director of the Conflict Prevention Center will, in consultation with the parties to the dispute, select from the register a number of names less than six. If the Director of the Conflict Prevention Center is a national of any of the States involved in the dispute, his or her functions will be performed by the next most senior official who is not such a national.

Each disputing party has one month to reject, if it wants, up to three of the nominees from those selected by the Director--such rejections will be confidential. In the event that all of the names selected by the Director are rejected by the disputing parties, the *nominating institution* itself (i.e., the Conflict Prevention Center)--as opposed to its senior official--will select from the register an additional five names which have not been included in the "initial nominations." It is unclear whether "initial nominations" means only those nominations made by the disputing parties, or includes the second round of six names selected by the CPC Director.

Each disputing party has 14 days to reject, if it wants, one of the five names selected by the nominating institution, the Conflict Prevention Center. Such rejections will be *confidential.*

The persons nominated or selected are collectively known as "the CSCE Dispute Resolution Mechanism" or the Valletta Mechanism.

What is the scope of the Valletta Mechanism?

The Valletta Mechanism is designed for use between *not more than two* disputing parties. The reference to "other party or parties to the dispute" in section IV of the Report is inconsistent with the footnote on page 9 of the Report, which states that, "The problems arising when the parties are more than two will require further consideration."

Ironically, the primary function of the Valletta Mechanism is not to resolve disputes, as its name might lead one to believe. On the contrary, it is designed to be a less intrusive intermediary step that would facilitate the resolution of disputes *by the parties themselves* without actually being directly involved in the dispute resolution process. This reflects the view that imposed solutions are often unsuccessful in the long term.

Accordingly, the Valletta Mechanism "will seek appropriate contact with the parties to the dispute, separately or jointly. The Mechanism will adopt its methods of work, proceeding in such informal and flexible manner as it may deem practical." The Valletta Mechanism "will seek such information and comments from the [disputing] parties as will enable it to assist the parties in identifying suitable procedures for the settlement of the dispute. The Mechanism may offer general or specific comment or advice."

Limitations on the functioning of the Valletta Mechanism

1. "The procedure [for implementing the Valletta Mechanism] will not apply if the dispute has previously been dealt with, or is being addressed, under some other procedure for the settlement of disputes, as referred to in section VIII, or is covered by any other process which parties to the dispute have adopted."

Section VIII states that, "The comment or advice of the Mechanism may relate to the inception or resumption of a process of negotiation among the parties, or to the adoption of any other dispute settlement procedure, such as fact-finding, conciliation, mediation, good offices, arbitration or adjudication or any adaptation of any such procedure or combination thereof, or any other procedure which it may indicate in

relation to the circumstances of the dispute, or to any aspect of any such procedure."

On its face, this can be read to mean that if a dispute has been previously dealt with in the framework of another dispute procedure, including fact-finding, conciliation, mediation, good offices, arbitration or adjudication, then the Valletta Mechanism may not apply. It is unclear how this provision is to be reconciled with section IV of the Provisions, which permits the establishment of a Valletta Mechanism when other dispute resolution procedures have failed.

2. Rejections of potential Valletta Mechanism members by the disputing parties are confidential.

3. The proceedings of the Valletta Mechanism, unless otherwise agreed by the parties, will be confidential.

4. Any comment or advice offered by the Valletta Mechanism, unless otherwise agreed by the parties, will be confidential.

5. The Valletta Mechanism may not be established or used "if another [read: either] party to the dispute considers" that "dispute raises issues concerning its territorial integrity, or national defense, title to sovereignty over land territory, or competing claims with regard to jurisdiction over other areas." (Section XII of the Provisions.)

6. "If . . . the parties are nevertheless unable, within a reasonable time, to settle the dispute or to agree upon a procedure for its settlement, any party to the dispute may so notify the Mechanism and the other party to the dispute. Any party may thereupon, consistent with the provisions of section VI, paragraph 2, bring that circumstance to the attention of the Committee of Senior Officials." (Section IX.)

Section VI, para. 2 states, "Unless the parties agree otherwise, the proceedings of the Mechanism and any comment or advice offered by it will be confidential, although the

fact that the Mechanism has been established may be acknowledged publicly."

Together, these provisions could be interpreted to mean that if parties are unable to settle their dispute within an unspecified time, they may notify the Committee of Senior Officials of this fact, but may not discuss with the Committee the proceedings of the Valletta Mechanism or details of the dispute.

7. If the section XII exceptions clause has been invoked, either party may "bring that circumstance to the attention to the Committee of Senior Officials." Taken at face value, this would mean that only the fact that the exceptions clause has been invoked can be brought to the attention of the Senior Officials, not the underlying dispute.

Counter-Limitations

1. In the event the Valletta Mechanism has been unable to assist the parties in identifying suitable procedures for the settlement of the dispute "within a period of 3 months from any notification" [i.e., step one, the date when one party tells another it wants to establish a Valletta Mechanism under section IV], any party may "request the Mechanism to provide general or specific comment or advice on the *substance* of the dispute." (Emphasis added.) Recall that it may take up to 1 1/2 months from the date of notification just to establish the Valletta Mechanism.

2. Disputing parties may, by mutual agreement, go beyond the provisions of the Valletta Report.

3. "Nothing stated in the foregoing will in any way affect the unity of CSCE principles, or the right of participating States to raise within the CSCE process any issue relating to the implementation of any CSCE commitment concerning the principle of the peaceful settlement of disputes, or relating to any other CSCE commitment or provision." (Section XV.)

Unanswered Questions

Who acts on behalf of the "nominating institution"?

In the event that all six names selected by the Director are rejected by the disputing parties, the *nominating institution* itself (i.e., the Conflict Prevention Center)--as opposed to its senior official, the Director--is supposed to select from the register an additional five names which have not been included in the initial nominations. However, the CPC itself is not a person, and it is unclear who exactly would perform this function. There is a Consultative Committee based at the CSCE which consists of the representatives to the CSCE Confidence- and Security-Building Measures. It is unlikely, though, that this body would be able to reach a consensus on selections given that it would contain representatives from the two disputing parties which cannot themselves reach agreement on this subject.

Who pays for the Valletta Mechanism?

"Any expenses incurred in utilizing the CSCE Dispute Settlement Mechanism, *other* than those incurred by the parties to the dispute for the conduct of the proceedings, will be shared equally between the parties to the dispute *unless they agree otherwise.*"

This provision carves out an exception (those expenses incurred by the parties to the dispute for the conduct of the proceedings) but doesn't say who will pay for them. If this meant that the disputing parties would pay for them, wouldn't that clause read, "*including* those incurred by the parties to the dispute for the conduct of the proceedings . . ."? Does this mean that the disputing parties pay for "any expenses incurred," etc., and the 34 CSCE countries share the rest of the burden ("those incurred by the parties to the dispute for the conduct of the proceedings") according to the proportions established in the Paris Charter?

Presumably, the clause "unless they agree otherwise" could mean that the two disputing parties agree to split their

costs 60-40, instead of 50-50 (for example). Could it also mean that two disputing parties can agree to shift the expenses of their establishment and use of a Valletta Mechanism--costs which have no ceiling in the Valletta Report--to the other participating States?

What if there are more than two disputing parties?

The Valletta Report does not establish procedures for using the Valletta Mechanism when there are more than two disputing parties. The footnote on page 9 of the Report states that, "The problems arising when the parties are more than two will require further consideration."

STATEMENTS BY THE U.S. DELEGATION

Opening Statement
by Michael K. Young

Head of the United States Delegation
to the Valletta CSCE Meeting
on Peaceful Settlements of Disputes

January 16, 1991

Mr. Chairman, when last November our leaders signed the Paris Charter, it inaugurated a new era in our relations, made possible by the unprecedented scope and pace of change in Europe. In these early days of 1991, it is already evident that far-reaching and rapid change will also characterize the New Year.

It is in everyone's interest that this change should occur peacefully, in an environment that is conducive to the further political and economic development of the whole of Europe. The CSCE process has an important part to play. The participating States must do all they can to ensure that the promise of Paris is realized--not withered by strife and hardship, not crushed by a reversion to repressive methods and violence.

It is therefore with profound sadness that my government joins the many expressions of concern made around this table regarding the tragic situation in Lithuania and the other Baltic States. Soviet actions towards the Baltic States are utterly inconsistent with the principles of the Helsinki Final Act and the precepts of the New Europe envisaged at Paris.

The dramatic progress made in Paris was possible in part because Soviet leaders chose to embark upon the path of *glasnost, perestroika,* and democratization. These reforms have opened unprecedented opportunities for the peoples of the Soviet Union. They have also led to dramatic improvements in bilateral and international relations throughout the CSCE and world-wide.

Yet in stark contrast to the bright promise of Paris, and the principles of *perestroika* and *glasnost,* recent days have witnessed the brutal and systematic use of force, and the threat of further use of force, by Soviet authorities against peaceful and democratically elected governments, which represent the will of the people. Brutality also has been used against the citizens who peacefully support these governments. We join with fellow nations across the broad spectrum of the CSCE community in condemning such acts by the Soviet authorities. These acts have resulted in the death of innocent people; they have inflicted grievous injury; they threaten the vital process of reform in the Soviet Union; and, they cast an ominous shadow over the New Europe that we all seek to build.

Reiterating his strong determination to strengthen and encourage processes of peaceful change in the Soviet Union, President Bush has said, "Legitimacy is not built by force--it is earned by the consent of the people, by openness and by the protections of basic human and political rights."

Therefore, in keeping with my government's nonrecognition policy and in light of strong American support for the aspirations of the Baltic peoples to determine their future, my delegation echoes President Bush's appeal to Soviet leaders to refrain from further acts that might lead to more violence. This appeal is most appropriate given the emphasis here in Valletta on finding peaceful means of settling differences. We further urge the Soviet Government to pursue the path of negotiations and dialogue with the freely elected representatives of the Baltic States. And, in solidarity with the other deeply concerned states of the CSCE community, we call upon the Soviet Union to rejoin the path leading from Paris. This must be an important component of our work here--to act collectively and cooperatively to persuade the Soviet leadership to deal with the Baltics in full conformity with CSCE principles.

Here in Valletta, we have an opportunity to give concrete expressions to the commitment we renewed in paris to settle disputes by peaceful means. My government has come prepared to

do all we can to join in moving the CSCE forward in the peaceful settlement field.

To this end, I would like to make three general comments about the New Europe and the relevance of our work to its development.

First, the best and most effective safeguard for peace is the development of deeply ingrained patterns of peaceful interaction at every layer of society and government. Habits of interaction cannot be imposed or merely proclaimed, however. They are formed through the pursuit of shared interests and under conditions of respect for agreed standards of conduct. For many of us, these habits are part and parcel of our daily engagement in the mainstream of European and international democracy. The Paris Charter envisions that a high degree of peaceful interaction among all signatory states will be become the norm rather than the exception.

Second, I want to emphasize that the presence, rather than the absence, of disputes between countries, usual indicates a high degree of interaction and friendliness--necessarily hostility. The United States and its closest friends and allies are routinely engaged in disputes. And, routinely, we find all manner of ways to settle them peacefully. Our goal in CSCE, then, is not the absence of disputes between CSCE states. Rather, in our judgment, it is the effective application of peaceful means to settle the disputes that will certainly arise--and engendering an atmosphere where this is a matter of course.

Third, my government fully recognizes that finding peaceful solutions to disputes is of heightened importance to a Europe in profound transition. My government and I are convinced that CSCE's political and institutional development can help to ease Europe's transition and channel change in a positive direction. Together in CSCE, we can work to hasten the day when peaceful settlement is a routine and unremarkable daily practice throughout the continent and in the United States and Canada as well.

So let us turn now to the task at hand. We are in the favorable position in Valletta of having agreed in advance that CSCE can and should make its own contribution to the peaceful settlement of disputes. The real question before us is how our mission is best accomplished. As is clear from the many approaches and proposals that have been shared with my delegation, there is no single obvious answer as to how best to fulfill our objectives.

Because the identification of principles or guidelines remains a successful tradition in CSCE, I think a good start for this meeting would be to elaborate guiding principles governing the settlement of disputes. Such guiding principles could incorporate commitments, *inter alia*, to manage disputes pending their settlement, to settle disputes peacefully, to involve a third party where the parties have been unable to settle a dispute among themselves, and to encourage appropriate use of existing dispute settlement institutions.

Having elaborated such guiding principles, we could turn to promoting the successful implementation of such principles, and specifically address what role the CSCE could best play.

In our view, the key to successful implementation of the principles will be to draw lessons from practical experience. Experience teaches us that the most important pre-condition of successful dispute settlement is that the states concerned are satisfied with the particular method chosen. In fact, state practice reveals that states have been extremely creative in adapting traditional methods of dispute settlement, as well as devising new methods, to suit particular cases. By the same token, "one-size-fits-all" mechanisms, which are not suited to addressing the nuances of particular cases, have not been particularly successful.

Such lessons from the real world lead us to two conclusions concerning the direction in which the Valletta meeting should be headed, in the opinion of our government. First, we should not attempt to squeeze all disputes into a rigid mechanism, a Procrustean bed, if you will, no matter how ill-fitting such a mechanism might be--rather, we should design a system whereby we allow the

dispute settlement method to fit the nature and circumstances of the particular dispute. Second, an active and innovative role that CSCE could play would be to facilitate identification of the most appropriate dispute settlement method for a particular dispute. This sort of service, which would be process-oriented, would, in our opinion, have several considerable advantages:

- it would focus on what experience shows is the key to successful dispute settlement--finding the right method;
- it would direct attention to a critical area that is often overlooked in international practice as states frequently jump from their inability to settle a dispute either to the conclusion that the settlement is not possible or to a method of settlement with which they are not in the long run satisfied and is consequently therefore not likely to lead to a long-term resolution of the dispute;
- it is likely to be both useful and used; and
- it would put the CSCE in a position where it could lead the way internationally in the direction of what we perceive as the vanguard of modern dispute settlement efforts.

Of course, such a service would be available to CSCE states on a voluntary basis. In addition, however, given our anticipated guiding principle that states must involve a third party if they have been unable to settle a dispute among themselves, we could envision structuring the service in such a way that resort to it would be mandatory if the parties to a dispute had been unable to agree on an appropriate method for settling their dispute.

The question then arises what happens when the concerned states, having gone through such a process-facilitation, are still unable to agree on an appropriate peaceful settlement method? We could envision, in such a case, that the states concerned would be committed to mandatory facilitation concerning the substance of the dispute, along the lines of mediation, or perhaps conciliation calculated to aid in their resolution of the dispute.

Such facilitation would have several important features:

- First, it would operate only as a last resort--a "safety net." This is important because we do not want to either limit the flexibility of states to choose more appropriate methods or create a method that compete with existing dispute settlement regimes.
- Second, it would assist parties themselves in settling the dispute and would not take it out of their hands. This is important because a settlement method that allows the parties themselves to resolve the dispute both encourages interaction between the parties and makes it more likely that the final settlement will be a lasting one.
- Third, such a method, operating under CSCE auspices, would fill a vacuum in existing methods. This is important because if we are simply duplicating existing methods, we are not making an actual contribution to peaceful settlements of disputes.
- Fourth, it would be flexible enough to address not only disputes based on the enforcement of legal rights but the full range of potential disputes. This is important because certain methods are not suited to addressing all types of disputes.
- Finally, it would not exclude any category of topics from its reach. This is important because we will want to ensure that our last-resort CSCE method is capable to addressing the very types of disputes most likely to threaten peace and security in the CSCE region.

We believe that such an approach, which makes third-party involvement in process a mandatory intermediate step before third-party involvement in substance, and which makes third-party involvement in substance of a flexible, broad, and non-duplicative character, holds the best chance of providing a long-term contribution to the peaceful settlement of disputes within the CSCE. Such an approach would put the CSCE on record not only as theoretically supporting the peaceful settlement of disputes, but as taking practical, concrete steps to enhance the likelihood that disputes really will be settled peacefully.

Mr. Chairman, the United States is, as a country, deeply committed to peaceful settlements of disputes, both domestically and internationally. We have extensive experience with peaceful

settlement methods and are routinely engaged in peaceful settlement efforts. U.S. citizens have made some of the most innovative contributions to the practice of successful dispute resolution. Notwithstanding our enthusiasm for this subject matter, however, I would introduce a note of caution with respect to this meeting. While we all agree that this meeting should have as its goal making a genuine step forward in the peaceful settlement of disputes, we should not mistake agreement *per se* for progress. That is, if we cannot find something that is actually a step forward, then we believe that we should be prepared to keep looking.

I am convinced that if the direction of our contribution is proper, then even a seemingly modest step forward will be an important step. On the other hand, if the direction of our contribution is ill-conceived, even a seemingly major step forward may well be only another monument to failure--beautiful on paper, but unused, unworkable, ineffectively, and, worst of all, potentially undermining the credibility of the CSCE process. We believe success will not necessarily be judged by the document achieved at the end of our meeting, but its use in 1991, 1992, and beyond.

To sum up, Mr. Chairman, the U.S. delegation is committed to working in Valletta to address any issue that other participating States wish to address and, through this process, to find the most practical and durable contribution that CSCE can make to the peaceful settlement of disputes.

Mr. Chairman, as Deputy Prime Minister de Marco said so eloquently last night, some might see it as cruel irony that our meeting opened on the very date that the United Nations set for Iraq's withdrawal form Kuwait. Like many of you, my delegation does not view the coincidence of dates as a contradiction. Quite the opposite. Iraq's brutal invasion of its peaceful neighbor only highlights the importance of the peaceful settlement of disputes. The Valletta meeting is a powerful symbol of the way international relations should and must be conducted in the new Europe and in the world at large.

Finally, Mr. Chairman, on behalf of my delegation, I would like to express my warmest thanks to the Government of Malta for its willingness to host this meeting, its generous hospitality, and the warmth and kindness that has been extended by its people. May I echo the sentiments of the distinguished French representative: may we be worthy of this auspicious setting. Thank you.

Statement of Michael K. Young

Head of the United States Delegation
to the Valletta CSCE Meeting
on Peaceful Settlements of Disputes

January 21, 1991

Mr. Chairman/Madame Chairwoman, at the outset of this meeting, nearly a week ago, many delegations here, including my own, appealed to the Soviet Union to cease its use of force in the Baltic States. We appealed to Moscow to seek a quick and peaceful settlement of its dispute with the Latvia, Lithuania, and Estonia. We appealed for the rule of the law over the rule of force.

Sadly, I have learned this morning that four Latvians were killed this weekend as Soviet forces stormed government buildings of the freely elected Latvian Government.

Mr. Chairman/Madame Chairman, once again I urge the Soviet Government to renounce the use of force against the peaceful citizens of the Baltic States and to take the necessary steps to demonstrate its commitment to all the principles of the Helsinki Final Act, including the peaceful settlement of disputes.

Thank you.

Statement of Michael K. Young

Head of the United States Delegation
to the Valletta CSCE Meeting
on Peaceful Settlements of Disputes

January 22, 1991

Thank you, Mr. Chairman.

This morning, the U.S. delegation distributed a nonpaper aimed at furthering our discussion on possible contributions that this meeting could make to the peaceful settlement of disputes. I would like to take a few minutes to explain our thinking in developing this non-paper.

Section 1 of the non-paper identifies general principles governing the peaceful settlement of disputes. Many of these principles have been voiced by other delegations; a few, however, have not and we believe that the meeting should consider them.

First, we have highlighted the desirability of having participating States develop and implement mechanisms to keep disputes from occurring (for example, arrangements for notification and consultation); in our view, it would be very disappointing if a meeting on PSD neglected to consider the importance of mechanisms designed to reduce the possibility that disputes will arise--or at least permit them to be dealt with at an early stage, while they are easier to resolve.

Second, we have stressed the importance of having parties to a dispute pick a mutually satisfactory method of resolving that dispute; as I stated in my opening statement, experience shows us that mutual satisfaction with the settlement method is a critical aspect of successful dispute settlement efforts.

Third, with respect to concerns that a possible disadvantage of creating a "subsidiary" method is that it may only rarely be used, we have made clear that participating States would always be free, on

a voluntary basis, to use either or both stages of the method in the first instance.

Now, I will turn to the "method" that we offer for discussion. We have called it the CSCE Facilitation Procedure."

The procedure, which would be implemented through the parities' selection of a "CSCE facilitator," would consist of two different types of third-party assistance:

- first, a stage designed to facilitate the parties' reaching agreement on a mutually satisfactory method of settling the dispute; and
- second, a stage designed to facilitate the parties' reaching agreement on the substance of the dispute.

The first stage of the procedure would be a mandatory one, that is, it could be invoked by any party to the dispute if negotiations had not led to a settlement of the dispute or to agreement on a method of settling it.

We would consider very important the inclusion of such a stage in a dispute settlement method:

- First, assisting parties by pointing them in the direction of an appropriate settlement method would focus on a critical aspect of successful dispute settlement that is often overlooked;
- second, assistance of this kind is generally unavailable;
- third, such assistance could increase the likelihood that the method chosen by the parties would lead to a satisfactory settlement in the long term and that there would be compliance with its terms; and
- fourth, it would put the CSCE in the vanguard of modern dispute settlement efforts.

The second stage of the procedure would focus on the substance of the dispute. This stage would be mandatory only if the first stage of the procedure failed to result in agreement on a settlement method.

This stage would be designed to keep the dispute in the hands of the parties and help them reach agreement among themselves. Unlike arbitration, the third party would not issue a binding decision. Unlike conciliation, the third party would not even issue a recommendation unless the parties requested one. Moreover, the process would be confidential, unless the parties agreed otherwise.

Some have said that this kind of procedure should be called "mediation"; others have called it "conciliation." To avoid confusion, we have simply called it "facilitation" and have sought to describe its characteristics.

We would see several advantages to such an approach:

- First, a procedure that leaves settlement of the dispute in the parties' own hands encourages "interaction" rather than "confrontation"--this is something we should promote as we seek to create a new Europe;
- Second, such a procedure could--if properly structured--fill a vacuum in existing methods rather than create yet another arbitration mechanism;
- Third, we believe that such a procedure would not be costly--at least compared with other more formal processes such as conciliation and arbitration;
- Fourth, the procedure is simply and does not require the creation of elaborate institutional structures;
- Fifth, and most important, such a procedure would be an appropriate means of addressing the full range of possible disputes. While I agree with those who are not comfortable with drawing a clean distinction between "legal" and "political" disputes, it must be acknowledged that certain settlement methods are more appropriate for disputes with certain characteristics. In our view, it is critical that our method be of a nature flexible enough to enable it to address the very security among CSCE states and the ones which my Minister wants me to address.

If we wanted to exclude the most important disputes from our method, i.e., those most likely to lead to deteriorations in relationships among CSCE states, there are a number of ways

we could do that: we could create a method which, by its nature, was incapable of addressing the full range of disputes; alternatively, we could create a method which created such a high level of discomfort that states felt that had to exclude such disputes from its reach. But I must be honest, if we were to exclude such disputes from the reach of our method, I believe we would have accomplished very little.

I would note that this nonpaper does not address all the details associated with our idea. We deliberately left many of these open both because we wanted to present the major outlines of the idea for discussion, and because we believe that, if the idea is considered worth pursuing, the details could be addressed in a number of different satisfactory ways.

I would also note that there are two ways in which a CSCE role could be imagined with respect to our approach: a technical role, and a political role:

- In terms of a technical role, it should be noted that our approach would be capable of functioning without any institutionalization. At the same time, if it were considered desirable, a CSCE institution could be given a technical role in implementing the approach by, for example, maintaining and updating the list of potential facilitators.
- In terms of a political role, we would imagine that the existence of PSD principles would make it legitimate for participating States to raise cases of noncompliance at appropriate CSCE meetings. This would include not only disputing States vis-a-vis each other, but other participating States as well if they considered that the principles were not being followed. In a sense, the political dimension of the CSCE will operate as the final "safety net."

I would also note that, when creating any system, the question arises what happens if the parties do not comply? To a large extent, we must rely on the good faith of the participating States to implement their CSCE commitments.

Mr. Chairman, let me close by stating that we have profited from the many ideas that have been shared around this table and we hope that our ideas will be of some use to other delegations as we consider the best way to carry out our mandate.

Statement of Michael K. Young

Head of the United States Delegation
to the Valletta CSCE Meeting
on Peaceful Settlements of Disputes

January 24, 1991

Mr. Chairman, this morning we note the presence in the public gallery of the Deputy Speaker of the Parliament of Estonia, Madam Lauristin. On behalf of my delegation, I would like to welcome her to our meeting.

Mr. Chairman, President Bush and Secretary of State Baker have already made clear that the United States condemns the use of force and intimidation by the Soviet Government against the freely elected governments of the Baltic States and their citizens. We have long advocated a genuine and peaceful dialogue between the Soviet Government and the legitimate representatives of the Baltic peoples.

Given our long-standing position of not recognizing the forcible incorporation of the Baltic States into the Soviet Union, we well understand the interest of Baltic representatives in the CSCE process. We also understand their interest in this CSCE meeting of experts on the Peaceful Settlements of Disputes, because the violence and force that have been employed in the past few days in the Baltic States stands in contradiction to the fundamental principle that disputes should be resolved by peaceful means.

Thank you, Mr. Chairman.

Statement of Michael K. Young

Head of the United States Delegation
to the Valletta CSCE Meeting
on Peaceful Settlements of Disputes

January 30, 1991

This morning, the Executive Secretariat distributed a proposal for consideration by this meeting. The proposal represents our attempt to modify our original nonpaper so as to reflect many of the constructive comments that have been made by our colleagues around this room. I would like to take a few minutes to point out these modifications.

Concerning section 1 of the proposal, which contains principles of peaceful settlement of disputes:

- first, we have added a new principle #1, based on the comment by many delegates that the best way for states to avoid disputes is for them to abide by international law and CSCE commitments;
- second, we have re-ordered the principles so that they follow a more logical progression from avoiding disputes; then, should disputes nevertheless arise, managing them to avoid conflict; settling them peacefully; choosing a satisfactory settlement method; and, finally, taking general steps to strengthen commitments to peaceful settlement of disputes;
- finally, several of you noted that some of the points that we called principles more properly belonged in the section on the CSCE method; we have thus moved the last three points of our nonpaper to that section.

Now, I will turn to the "method" that we offer for consideration.

As a preliminary matter, regarding the name of the procedure, many of you noted that "facilitation" may or may not be the best word for describing such a procedure. While we have strong views

about the substance of any procedure we might not agree to, our views about the name of such a procedure--provided that we all agree on the substance--are not strong. We have therefore put the word "facilitation" in brackets.

Now, many of you commented on three particular aspects of the procedure we outlined in our nonpaper.

First, many of you noted that we had not provided a means for selecting the third party, if the parties could not reach agreement and the individuals they selected could not reach agreement. You correctly noted that there must be a clear way to get around such an impasse. We have therefore, in paragraph 7, provided a means of selecting the third party. We have suggested the use of the Secretary-General of the Permanent Court of Arbitration. However, we are open to other ideas.

Second, many of you noted that there should be time limits built into the procedure. While we do not believe that time limits could be put on the negotiating process leading up to the use of the procedure--since every case will be different--we did agree that there should be time limits put on the selection of the third party. You will notice the inclusion of such time limits in paragraphs 6 and 7.

Third, many of you commented that the third party should be given the authority in advance to make his or her own suggestions to the parties for possible ways of settling the dispute.

We have given a great deal of thought to this idea. The reason why we have been reluctant to include such an authority was that we did not want to send the wrong signal to the third party. That is, we did not want to give the third party the mistaken impression that we intend for him to serve as a kind of judge, with his or her primary responsibility to listen to the arguments of the parties and issues a ruling (even if that ruling is not binding). Such an impression would be quite wrong and would undermine the kind of procedure we are interested in creating--that is, an interactive procedure where the parties themselves, with the help of the third party, develop the solution to their problem.

After much reflection, however, we have concluded that, as long as it is clear from the rest of the text that the third party is not to act like a judge but is to help the parties reach agreement among themselves, we did not see a reason why the third party should not be given the authority--if he or she chooses--to provide suggested settlement ideas. Thus, you will see in paragraph 14 that we have added such an authority. I cannot stress strongly enough, however, that our ability to agree to such an authority would be contingent upon other indications in the mandate to the third party that the development of his or her own settlement ideas is not the third party's primary responsibility.

Finally, it should be noted that we have added a new section IV to the proposal which addresses the role of the CSCE political process in peaceful settlement of disputes. Many of you commented that, consistent with the CSCE tradition, the ultimate "safety net" for any method we develop here will be the CSCE political process. Specifically, any participating State will be able to raise within the CSCE political process issues related to the implementation of the principles and provisions that we agree upon here. This will serve as the best incentive for states to comply with such principles and provisions.

I hope this explanation has been helpful.

CSCE DOCUMENTS RELATING TO PEACEFUL SETTLEMENTS OF DISPUTES

The Montreux Report
December 1978

REPORT

OF THE MEETING OF EXPERTS REPRESENTING THE PARTICIPATING STATES OF THE CONFERENCE ON SECURITY AND CO-OPERATION IN EUROPE, FORSEEN BY THE FINAL ACT OF THE CSCE IN ORDER TO PURSUE THE EXAMINATION AND ELABORATION OF A GENERALLY ACCEPTABLE METHOD FOR PEACEFUL SETTLEMENT OF DISPUTES AIMED AT COMPLEMENTING EXISTING METHODS

In accordance with the mandate of the Final Act of the Conference on Security and Co-operation in Europe and the relevant provisions of the Concluding Document of the Belgrade Meeting 1977, a Meeting of Experts representing the participating States took place at Montreux from 31 October to 11 December 1978 in order to pursue the examination and elaboration of a generally acceptable method for peaceful settlement of disputes aimed at complementing existing methods.

At the opening meeting the participants were addressed by Mr. Pierre Aubert, Head of the Federal Political Department, on behalf of the Government of Switzerland.

The participants adopted an agenda and proceeded to a general exchange of views after which several proposals aimed at complementing existing methods for peaceful settlement of disputes were submitted and discussed. A working paper based on the "Draft Convention on a European System for the Peaceful Settlement of Disputes" was submitted for consideration which put forward the following subsidiary and compulsory procedures: negotiation, inquiry, mediation, conciliation and arbitration. Another working paper was submitted for consideration which put forward a proposal of mandatory consultations as a possible method for peaceful settlement of disputes. A further paper was submitted which put forward the concept of a comprehensive method for peaceful settlement of disputes within specific subject areas, including appropriate mandatory features. Other proposals and ideas were put forward for consideration. Divergent views were expressed and no consensus was reached on specific methods.

The participants stressed the importance their governments attach to détente, which has continued since the adoption of the Final Act in spite of difficulties and obstacles encountered. In this context they underlined the role of the CSCE, the implementation of the provisions of the Final Act being essential for the development of this process.

The participants reaffirmed the adherence of their governments to the principle of peaceful settlement of disputes as enshrined in the Charter of the United Nations and in the Final Act of the CSCE. They also stressed the significance of elaborating, in accordance with the mandate contained in the Final Act, a method for peaceful settlement of disputes.

The participants agreed on a common approach to the elaboration of a method for peaceful settlement of disputes between or among the participating States which should be based on the following:

— consistency with the principles and the purposes of the Charter of the United Nations and with the Final Act of Helsinki, especially principle V of the latter document;

— consistency with sovereign equality of States and the free choice of means;

— experience and the treaty and diplomatic practice and the views of all the participating States in this field;

— acceptability to all participating States irrespective of their political, economic or social systems as well as of their size, geographical location or level of economic development;

— subsidiarity to existing methods and institutions for the peaceful settlement of international disputes;

— complementarity to existing methods so as to promote, in good faith and a spirit of co-operation, a rapid and equitable solution on the basis of international law;

— flexibility of the method;

— capacity for progressive development of the method.

The method to be elaborated should contribute to peace, security and justice in Europe, to the further development of détente and co-operation among the participating States.

The participants recommended that the participating States consider the possibility of promoting and extending the existing practice of including, in appropriate treaties among and between them, provisions for the peaceful settlement of disputes.

The participants recommended to the governments of States participating in the CSCE that they consider, at the Madrid Meeting, the possibility of convening another Meeting of Experts in order to pursue, on the basis of the Final Act, the examination and elaboration of a generally acceptable method for peaceful settlement of disputes aimed at complementing existing methods, taking into account the common approach set forth above, as well as the various proposals and ideas discussed at the Montreux Meeting.

The participants recommended that contacts between the governments of participating States continue in order better to acquaint themselves with each other's views on the subject of peaceful settlement of disputes.

The participants expressed their deep gratitude to the Government of Switzerland for the excellent organization of the Meeting and for the warm hospitality extended to them during their stay at Montreux.

The Athens Report
April 1984

REPORT

OF THE MEETING OF EXPERTS REPRESENTING THE PARTICIPATING STATES OF THE CONFERENCE ON SECURITY AND CO-OPERATION IN EUROPE, FORESEEN BY THE FINAL ACT OF THE CSCE AND THE CONCLUDING DOCUMENT OF THE MADRID MEETING, IN ORDER TO PURSUE, ON THE BASIS OF THE FINAL ACT, THE EXAMINATION OF A GENERALLY ACCEPTABLE METHOD FOR THE PEACEFUL SETTLEMENT OF DISPUTES AIMED AT COMPLEMENTING EXISTING METHODS.

In accordance with the mandate of the Final Act of the Conference on Security and Co-operation in Europe, in conformity with the recommendation contained in the Report of the Montreux Meeting of Experts, and in accordance with the relevant provisions of the Concluding Document of the Madrid Meeting 1980, a Meeting of Experts representing the participating States took place in Athens from 21 March to 30 April 1984 in order to pursue, on the basis of the Final Act, the examination of a generally acceptable method for the peaceful settlement of disputes aimed at complementing existing methods. The participants took into account the common approach set forth in the Report of the Montreux Meeting of Experts.

At the opening session the participants were addressed by Mr. Yiannis Capsis, Deputy Foreign Minister, on behalf of the Government of Greece.

The participants adopted an agenda and proceeded to a general exchange of views after which a number of proposals were submitted and discussed. A thorough discussion was held. Some progress was made in the examination of a generally acceptable method for the peaceful settlement of disputes aimed at complementing existing methods. Particular emphasis was put on ways and means of including a third party element in such a method. Divergent views were expressed and no consensus was reached on a method. It was recognized that further discussions should be pursued in an appropriate framework within the CSCE process.

The participants expressed their deep gratitude to the Government of Greece for the excellent organization of the Meeting and for the warm hospitality extended to them during their stay in Athens.

Athens, 30 April 1984

The Valletta Report
February 1991

REPORT OF THE CSCE MEETING OF EXPERTS ON PEACEFUL SETTLEMENT OF DISPUTES, VALLETTA 1991

The representatives of Austria, Belgium, Bulgaria, Canada, Cyprus, the Czech and Slovak Federal Republic, Denmark, Finland, France, Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg - European Community, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America and Yugoslavia met in Valletta from 15 January to 8 February 1991 in accordance with the relevant provisions of the Concluding Document of the Vienna CSCE Meeting 1986 and the Charter of Paris for a New Europe, to consider the question of Peaceful Settlement of Disputes.

The representative of Albania attended the Meeting as observer.

The formal opening was attended by H.E. Dr. Censu Tabone, President of Malta, who gave an address of welcome. The Meeting was opened by the Hon. Professor Guido de Marco, Deputy Prime Minister and Minister of Foreign Affairs and Justice of Malta, who delivered the opening address on behalf of the host country. He also closed the Meeting.

Opening statements were made by Heads of Delegation of the participating States.

The Hon. Gianni de Michelis, Minister of Foreign Affairs of Italy, addressed the meeting.

A number of proposals were submitted for consideration by the Meeting.

The representatives of the participating States held a general exchange of views on the peaceful settlement of disputes. It was observed that developments in Europe and the world since the Vienna Follow-up Meeting had enhanced the importance of the Meeting, and that this was also reflected in the Charter of Paris for a New Europe, signed by the Heads of State or Government of the participating States on 21 November 1990.

During their deliberations, the representatives of the participating States took note of the fact that the States were already bound by a number of agreements containing various methods for a peaceful settlement of disputes, and that, in practice, they made use of an even greater variety of such methods. It was noted in particular that many participating States have devised innovative approaches to dispute settlement designed to suit the characteristics of particular disputes, as well as developed arrangements aimed at preventing or managing disputes, such as notification and consultation arrangements, and the establishment of ad hoc and permanent joint commissions. It was also noted that many participating States were parties to the 1899 and/or 1907 Hague Conventions for the Pacific Settlement of International Disputes, and that many of them have accepted the jurisdiction of the International Court of Justice, in accordance with the Statute of the Court.

Following their deliberations, the representatives of the participating States adopted this Report.

PRINCIPLES FOR DISPUTE SETTLEMENT AND PROVISIONS FOR A CSCE PROCEDURE FOR PEACEFUL SETTLEMENT OF DISPUTES

INTRODUCTION

The commitment of the participating States in the Conference on Security and Co-operation in Europe (CSCE), laid down in Principle V of the Helsinki Final Act, to settle disputes among them by peaceful means represents one of the cornerstones of the CSCE process. This commitment is reaffirmed in the Vienna Concluding Document and the Charter of Paris for a New Europe.

In accordance with the Helsinki Final Act, all ten principles of the Declaration on Principles Guiding Relations between Participating States are of primary significance and, accordingly, apply equally and unreservedly, each of them being interpreted taking into account the others.

In the Charter of Paris for a New Europe the participating States solemnly pledged their full commitment to these ten principles, in order to uphold and promote democracy, peace and unity in Europe. They expressed their conviction that in order to strengthen peace and security among the participating States, the advancement of democracy, and respect for and effective exercise of human rights, are indispensable. They also reaffirmed the equal rights of peoples and their right to self-determination in conformity with the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States.

Full implementation of all CSCE principles and commitments constitutes in itself an essential element in preventing disputes among the participating States.

In accordance with international law and in particular the Charter of the United Nations, and also in accordance with the relevant principles of the Helsinki Final Act, threat or use of force must not be resorted to in order to settle disputes between States. Such disputes must be settled through peaceful means in accordance with international law. All States must comply in good faith with their obligations under the generally recognized principles and rules of international law with respect to the maintenance of international peace and security.

The existence of appropriate dispute settlement procedures is indispensable for the implementation of the principle that all disputes should be settled exclusively by peaceful means. Such procedures are an essential contribution to the strengthening of the rule of law at the international level and of international peace and security, and justice.

International disputes are to be settled on the basis of the sovereign equality of States and in accordance with the principle of the free choice of means in conformity with international obligations and commitments and with the principles of justice and international law.

Agreement, whether ad hoc or given in advance, between the parties to a dispute upon procedures for its settlement, appropriate for the parties concerned and the characteristics of the dispute, is essential for an effective and lasting system for the peaceful settlement of disputes.

Compliance with binding decisions reached through procedures for the peaceful settlement of disputes is an essential element in any overall structure for the peaceful settlement of disputes.

PRINCIPLES FOR DISPUTE SETTLEMENT

General

1. The participating States reaffirm their commitment to abide by international law and their determination to respect and fully implement all CSCE principles and provisions.

2. In conformity with international law, including the Charter of the United Nations, and in accordance with the relevant CSCE principles and provisions, the participating States will refrain from resorting to the threat or use of force to settle their disputes, and will seek a peaceful settlement thereof.

3. The participating States recognize that recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties is not incompatible with the sovereign equality of States. A request to have recourse to a settlement procedure does not constitute an unfriendly act.

Dispute prevention

4. The participating States will seek to prevent disputes and to develop, utilize, and improve mechanisms designed to prevent disputes from occurring, including, as appropriate, arrangements and procedures for prior notification and consultation regarding actions by one State likely to affect significantly the interests of another State.

Dispute management

5. Should disputes nevertheless occur, the participating States will take particular care not to let any dispute among them develop in such a way that it will endanger international peace and security, and justice. They will take appropriate steps to manage their disputes pending their settlement. To that end, the participating States will:

(a) address disputes at an early stage;

(b) refrain throughout the course of a dispute from any action which may aggravate the situation and make more difficult or impede the peaceful settlement of the dispute;

(c) seek by all appropriate means to make arrangements enabling the maintenance of good relations between them, including, where appropriate, the adoption of interim measures which are without prejudice to their legal positions in the dispute.

Dispute solution

6. As laid down in the Helsinki Final Act and subsequent relevant documents, the participating States will endeavour in good faith and in a spirit of co-operation to reach a rapid and equitable solution of their disputes on the basis of international law, and will for this purpose use such means as negotiation, enquiry, good offices, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice, including any settlement procedure agreed to in advance of disputes to which they are parties. To that end, the participating States concerned will in particular:

(a) consult with each other at as early a stage as possible;

(b) in case they cannot settle the dispute among themselves, endeavour to agree upon a settlement procedure suited to the nature and characteristics of the particular dispute;

(c) where a dispute is subject to a dispute settlement procedure agreed upon between the parties, settle the dispute through such procedure, unless they agree otherwise;

(d) accept, in the context of the CSCE Procedure for Peaceful Settlement of Disputes and its scope of applicability, the mandatory involvement of a third party when a dispute cannot be settled by other peaceful means.

Information from participating States

7. The participating States will, upon request from a participating State involved in a dispute, make best efforts to provide information regarding appropriate methods for the settlement of such dispute.

Continued efforts

8. In the event of failure to reach a solution within a reasonable time through the method agreed upon, the participating States parties to the dispute will continue to seek a way to settle the dispute peacefully.

Strengthening of commitments

9. The participating States will strengthen their commitments relating to the peaceful settlement of disputes. To that end, they will in particular:

(a) endeavour to include, in their future treaties, clauses providing for the settlement of disputes arising from the interpretation or application of those treaties, and to consider whether or not there is an appropriate role for a third party, be it mandatory or non-mandatory;

(b) refrain to the extent possible from making reservations to dispute settlement procedures;

(c) consider withdrawing reservations they may have made regarding dispute settlement procedures embodied in multilateral treaties;

(d) consider accepting the compulsory jurisdiction of the International Court of Justice, either by treaty or by unilateral declaration under Article 36, paragraph 2, of the Statute of the Court, and minimizing, where possible, any reservations attached to such a declaration;

(e) if they have made such a declaration accompanied by one or more reservations or if they do so in the future, consider withdrawing such reservations;

(f) consider submitting by special agreement to the International Court of Justice or to arbitration, using the Permanent Court of Arbitration, as appropriate, those disputes which lend themselves to such procedures;

(g) to the extent feasible, become party to other appropriate treaties, and other international agreements on dispute settlement;

(h) make wider use of international dispute settlement institutions;

(i) consider accepting the jurisdiction of international bodies for the peaceful settlement of disputes or control mechanisms, established by multilateral treaties pertaining, inter alia, to the protection of human rights, or, as the case may be, withdrawing existing reservations in respect of such mechanisms;

(j) examine means of establishing and strengthening mechanisms for securing compliance with binding decisions taken in the framework of the peaceful settlement of disputes;

(k) work actively within the international community for the advancement of methods for the peaceful settlement of disputes.

Information to natural or legal persons

10. In relation to disputes between them that are of special relevance to particular natural or legal persons, the participating States will, as they deem appropriate, provide information to those persons and hear their views.

PROVISIONS FOR A CSCE PROCEDURE FOR PEACEFUL SETTLEMENT OF DISPUTES

Section I

If a dispute arises between participating States, they will, without undue delay and in good faith, seek to settle the dispute through a process of direct consultation and negotiation, or seek to agree upon an appropriate alternative procedure of settling the dispute.

Section II

Without prejudice to the right of any participating State to raise an issue within the CSCE process, a dispute of importance to peace, security, or stability among the participating States may be brought before the Committee of Senior Officials by any party to the dispute.

Section III

The procedure described below will not apply if the dispute has previously been dealt with, or is being addressed, under some other procedure for the settlement of disputes, as referred to in Section VIII, or is covered by any other process which parties to the dispute have accepted.

Section IV

If the parties are unable, within a reasonable period of time, in the light of all circumstances of the dispute, to settle the dispute in direct consultation or negotiation, or to agree upon an appropriate procedure for settling the dispute, any party to the dispute may request the establishment of a CSCE Dispute Settlement Mechanism by notifying the other party or parties to the dispute.

Section V

1. A CSCE Dispute Settlement Mechanism consists of one or more members, selected by common agreement of the parties to a dispute from a register of qualified candidates maintained by the nominating institution. The register

comprises the names of up to four persons nominated by each participating State desiring to do so. No member of a Mechanism may be a national of, or permanently resident in the territory of any State involved in the dispute. By agreement between the parties, a Mechanism may include members whose names are not included in the register.

2. If the parties to a dispute have not reached agreement on the composition of a Mechanism within three months from the initial request of a party for the establishment of a Mechanism, the Senior Official of the nominating institution will, in consultation with the parties to the dispute, select from the register a number of names less than six. If the Senior Official of the nominating institution is a national of any of the States involved in the dispute, his functions will be performed by the next most senior official who is not such a national.

3. Each party (*) to the dispute has the right to reject up to three of the nominees. The parties will inform the nominating institution of the rejections, if any, within one month of having been informed of the nominations. This information will be confidential. After one month from the date of informing the parties of the nominations, the nominating institution will notify the parties of the composition of the Mechanism.

4. If the result of the above process is that all the nominees have been rejected, the nominating institution will select from the register an additional five names which have not been included in the initial nominations.

5. Each party to the dispute has now the right to reject one nominee. The parties will inform the nominating institution of the rejections, if any, within fourteen days of having been informed of the nominations. This information will be confidential. After the expiry of fourteen days from the date of informing the parties of the nominations, the nominating institution will notify the parties of the composition of the Mechanism.

(*) The problems arising when the parties are more than two will require further consideration.

Section VI

1. When the Mechanism has been established, it will seek appropriate contact with the parties to the dispute, separately or jointly. The Mechanism will adopt its methods of work, proceeding in such informal and flexible manner as it may deem practical.

2. Unless the parties agree otherwise, the proceedings of the Mechanism and any comment or advice offered by it will be confidential, although the fact that the Mechanism has been established may be acknowledged publicly.

3. The Mechanism may, if the parties so agree, use the premises and facilities of the International Bureau of the Permanent Court of Arbitration.

Section VII

The Mechanism will seek such information and comments from the parties as will enable it to assist the parties in identifying suitable procedures for the settlement of the dispute. The Mechanism may offer general or specific comment or advice.

Section VIII

The comment or advice of the Mechanism may relate to the inception or resumption of a process of negotiation among the parties, or to the adoption of any other dispute settlement procedure, such as fact-finding, conciliation, mediation, good offices, arbitration or adjudication or any adaptation of any such procedure or combination thereof, or any other procedure which it may indicate in relation to the circumstances of the dispute, or to any aspect of any such procedure.

Section IX

The parties will consider in good faith and in a spirit of co-operation any comment or advice of the Mechanism. If, on the basis of the proceedings of the Mechanism and of any comment or advice offered, the parties are

nevertheless unable, within a reasonable time, to settle the dispute or to agree upon a procedure for its settlement, any party to the dispute may so notify the Mechanism and the other party to the dispute. Any party may thereupon, consistently with the provisions of Section VI, paragraph 2, bring that circumstance to the attention of the Committee of Senior Officials.

Section X

The failure of a party to act upon any comment or advice of the Mechanism with regard to a procedure for the settlement of a dispute does not relieve any of the parties of the duty to pursue its efforts to settle the dispute by peaceful means.

Section XI

In the event referred to in the second sentence of Section IX, any party to the dispute may, within a period of three months from any notification, request the Mechanism to provide general or specific comment or advice on the substance of the dispute, in order to assist the parties in finding a settlement in accordance with international law and their CSCE commitments. The parties will consider in good faith and in a spirit of co-operation any such comment or advice of the Mechanism.

Section XII

1. Notwithstanding a request by a party under either Section IV or Section XI, the Mechanism will not be established or continued, as the case may be, if another party to the dispute considers that because the dispute raises issues concerning its territorial integrity, or national defence, title to sovereignty over land territory, or competing claims with regard to the jurisdiction over other areas, the Mechanism should not be established or continued.

2. In that event, any other party to the dispute may bring that circumstance to the attention of the Committee of Senior Officials.

Section XIII

The parties to a dispute may at any time by mutual agreement modify or adapt the present procedure as they may consider appropriate to facilitate the settlement of their dispute, inter alia, by agreeing:

(a) to authorize the Mechanism either to conduct a process of fact-finding, or to entrust one or more persons, one or more participating States, or any competent CSCE institution, or any other body, with a fact-finding mission;

(b) to request the Mechanism to undertake or organize any expert function in regard to the subject-matter of the dispute;

(c) to request the Mechanism to report in any other form than provided in the foregoing;

(d) to accept any comment or advice of the Mechanism as binding, in part or in full, with regard to the settlement of the dispute.

Section XIV

Any expenses incurred in utilizing the CSCE Dispute Settlement Mechanism, other than those incurred by the parties to the dispute for the conduct of the proceedings, will be shared equally between the parties to the dispute unless they agree otherwise.

Section XV

Nothing stated in the foregoing will in any way affect the unity of the CSCE principles, or the right of participating States to raise within the CSCE process any issue relating to the implementation of any CSCE commitment concerning the principle of the peaceful settlement of disputes, or relating to any other CSCE commitment or provision.

Section XVI

All parties to a dispute will implement meaningfully and in good faith the CSCE Dispute Settlement Procedure.

* * *

The representatives of the participating States noted that the Council of Ministers for Foreign Affairs will take into account the Report of the Valletta Meeting at its first meeting in Berlin. In this context, the representatives of the participating States recommend that the Council establish the necessary arrangements in accordance with the Charter of Paris for a New Europe. They, furthermore, noted that the next CSCE Follow-up Meeting in Helsinki will assess the progress achieved at the Valletta Meeting. In this context, the representatives of the participating States consider that the commitments contained in the present Report as well as their implementation should be kept under review, bearing in mind the importance of enhancing the effectiveness of the procedure.

The representatives of the participating States expressed their deep gratitude to the people and the Government of Malta for the excellent organization of the Meeting and for the warm hospitality extended to them during their stay in Malta.

Valletta, 8 February 1991

Summary of Conclusions
of the Council of Foreign Ministers (Excerpt)
June 1991

ANNEX 3

PEACEFUL SETTLEMENT OF DISPUTES

Taking into account the Report of the Valletta 1991 Meeting on Peaceful Settlement of Disputes, containing the Principles for Dispute Settlement and the Provisions for a CSCE Procedure for Peaceful Settlement of Disputes, the Council establishes the following arrangements in accordance with the Charter of Paris.

The Council

1. designates the Conflict Prevention Centre (CPC) to act as the nominating institution in accordance with Section V of the said Provisions, and requests the Director of the Secretariat of the CPC to assume his functions accordingly under the overall responsibility of the Council;

2. invites each participating State desiring to do so to communicate as soon as possible and preferably by 30 August 1991 the names of up to four persons to be entered into the register of qualified candidates to be maintained by the nominating institution in accordance with section V of said Provisions;

3. decides that the mechanism will come into force as soon as forty nominations have been received by the Director;

4. instructs the Director of the Secretariat of the CPC to notify the full list of nominations as soon as the fortieth nomination is received and subsequently to notify any additions or revisions which may be made;

5. recalls the experience of the Permanent Court of Arbitration and its Secretary-General which should be drawn upon, if so agreed, when the CSCE Procedure for Peaceful Settlement of Disputes is implemented;

6. notes that appropriate use can be made of the premises and facilities of the International Bureau of the Permanent Court of Arbitration.